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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/689,872 | 10/21/2003 | Edwin J. Hlavka | 0185/0778-US1 | 3330 |
| 76808 | 7590 | 06/22/2011 | | |
| Leason Ellis LLP 81 Main Street Suite 503 White Plains, NY 10601 | | | EXAMINER PRONE, CHRISTOPHER D | |
| | | | ART UNIT 3738 | PAPER NUMBER |
| | | | MAIL DATE 06/22/2011 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/689,872

Applicant(s)

HLAVKA ET AL.

Examiner

CHRISTOPHER D. PRONE

Art Unit

3738

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 79-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 79-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

Claims 1-78 have been cancelled.

Claims 79-83 are pending.

Priority Date

The priority date of this application dates back to provisional application 60420095, filed 10/21/02.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 79-83 are rejected under 35 U.S.C. 103 as being unpatentable over Koike et al (Koike) USPN 5,716,367 in view of Makower et al (Makower) USPN 6,071,292.

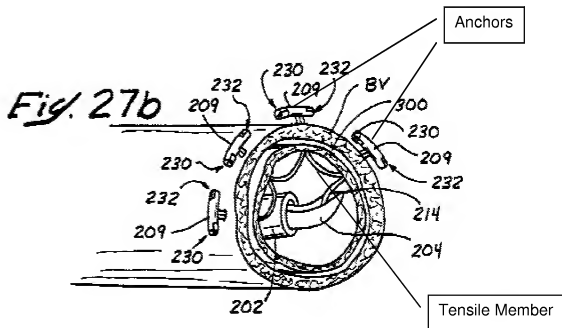
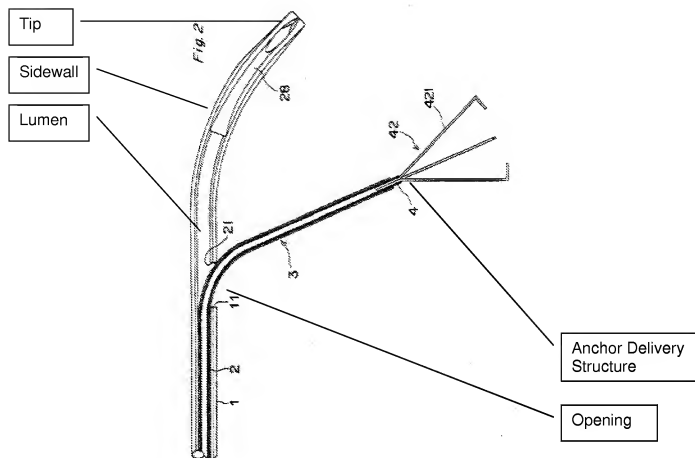
Koike discloses the invention substantially as claimed being a catheter assembly comprising a central lumen defined by a sidewall and a distal portion comprising a tip and an opening 11 spaced proximal from the tip in the side wall extending through to the central lumen. Koike further discloses an anchor delivery structure comprising a locking element is capable of being slidably / adjustably coupled to an anchor or a tensile member. The catheter of Koike can be bent or rotated to move from a position

that adapts to the shape of the operation to a position where it does not adapt to the shape of the operation site. See first figure below for details.

However, Koike does not disclose use of a plurality of anchors interconnected by a tensile member.

Makower teaches the use of an anchor delivery system comprising a catheter that implants a plurality of anchors connected by a tensile member using a movable central anchor delivery device shown best in figures 10 and 27b in the same field of endeavor for the purpose of allowing the operator to accurately arrange two separate points of tissue in a desired configuration.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the anchor delivery device of Koike with the delivery device and the anchors tethered by the tensile member disclosed by Makower in order to allow the operator to secure a plurality of tissue points together into a desired configuration.



Response to Arguments

Applicant's arguments filed 4/8/11 have been fully considered but they are not persuasive. The applicant argues that the combination fails to disclose a catheter portion adapted to be received into a chamber of the heart. This is not persuasive because it would have been obvious to a person having ordinary skill in the art at the time of the invention that the catheter of the combination could be inserted in the manner disclosed by Koike, piercing walls, or such that it is received into a chamber of the heart. Furthermore the language of the placement of the device is considered to be language of the applicant's intended use within an apparatus claim. Therefore it is given limited weight and read upon by the combination because they are capable of performing in the claimed manner. This same reasoning holds for the applicant's arguments that the combination fails to disclose its placement in the gutter region. The combination is fully capable of being inserted and operated in the gutter region and this would have been obvious to one of ordinary skill in the art at the time of the invention.

In regards to amended claim 83 the combination modifies the device of Koike to use the anchor delivery device and anchors of to deliver the anchors tethered together as disclosed by Makower.

In order to advance prosecution the applicant is advised to better define the structure of the anchors.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER D. PRONE whose telephone number is (571)272-6085. The examiner can normally be reached on Monday through Fri 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/THOMAS J SWEET/
Supervisory Patent Examiner, Art Unit 3738

CHRISTOPHER D. PRONE
Examiner
Art Unit 3738

/Christopher D Prone/